

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

In the matter of

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: CG Docket No. 02-278  
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Rules and Regulations Implementing the  
Telephone Consumer Protection Act of 1991

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Petition for Declaratory Ruling of All About  
the Message, LLC

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**COMMENTS OF VINCENT LUCAS IN OPPOSITION TO THE PETITION**

Once again those of us who pay attention to these FCC petitions are compelled to defend basic privacy rights from the onslaught of petitions by the telemarketing lobby. The AATM petition seeks to create a loophole that will render the TCPA completely ineffective in preventing unwanted automated telemarketing messages from being delivered to consumers' telephones. If granted, consumers will be bombarded by telemarketing messages. Consumers will be interrupted by frequent notifications that they have new messages; consumers' time will be wasted in purging these nuisance telemarketing messages from the answering system for their cell phone; and consumers will miss messages that they do want to hear when their account is too full to take new messages because it is jammed with unwanted telemarketing messages.

The AATM petition and Stratics Networks website are careful to avoid mention of telemarketing. However, the application of their "voicemail insertion" system to telemarketing is obvious. Voicelogic offers a similar service and is not so coy about its use in telemarketing. Exhibit A is a copy of <http://www.voicelogic.com/voicecasting.php> accessed 5/18/17. Voicelogic boasts that

Voicecasting can deliver these ringless messages, in the same fashion as a voice broadcast system, but the phone won't ring. This marketing communications tool,

expedites the dissemination of your message at a low cost. Voicecasting® Ringless Voicemail Broadcast is a marketing and lead generation tool, for mass marketing, with the use of Ringless Messaging Technology

(emphasis added) and says the ringless voice broadcast can be used for “Cold calling potential customers ... Voicemail Marketing ... deliver[ing] a marketing or retention message to a consumer cell phone or landline ... Fuses the power of direct mail and telemarketing for a fraction of the cost ... Reaches thousands of people in a matter of minutes”

#### I. The AATM system does make “telephone calls” within the meaning of the TCPA

The term “call” is not defined by the TCPA. However, surely a “call” must include the delivery of a message to a telephone number. For example, 47 U.S.C. § 227(b)(1)(A)(iii) prohibits making a call using an ATDS or artificial or prerecorded voice “to any telephone number assigned to a ... cellular telephone service ... or any service for which the called party is charged for the call ...” (emphasis added).

The AATM system delivers a message to a telephone number assigned to a cell phone. The incoming call ring is simply replaced by the sound that the cell phone makes for a new voicemail message. One sound is simply substituted for another. On most cell phones, that new voicemail sound is made almost as soon as the new voicemail is delivered.<sup>1</sup> Receiving that new voicemail sound during work, a family activity, leisure time, etc. is just as intrusive as an incoming call ring. The message is delivered to the consumer using the consumer’s telephone number and is delivered to an answering system assigned to the consumer’s telephone number. It is expected that consumers will listen to the message using the cell phone assigned to their cell phone number.

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<sup>1</sup> Unless the cell phone is operating in silent or vibrate mode. In vibrate mode, the incoming call vibration is replaced with the incoming voice message vibration.

The term “ringless” voicemail is a misnomer. There is a ring – but it’s the new voicemail ring instead of the incoming call ring.

Under the TCPA, the term “call” has never been defined based on the technology used to deliver the message. For example, this Commission has recognized that text messages are considered “calls” under the TCPA. The AATM petition argues that because they use a different methodology to deliver their voice message to the telephone number, they are not making a “call”. This is analogous to saying that consumers who use a VoIP telephone service are not really receiving “calls”, and therefore are not protected by the TCPA, because the internet is being used to deliver the telephone message instead of a traditional telephone line or cellular service. The analogy to VoIP is very appropriate because the AATM petition alleges that the AATM servers deliver the message to the telephone companies’ computers, presumably via the internet.

## II. Harm to consumers

The AATM petition at 2 alleges “The act of depositing a voicemail on a voicemail service without dialing a consumers’ cellular telephone line does not result in the kind of disruptions to a consumer’s life—dead air calls, calls interrupting consumers at inconvenient times, or delivery charges to consumers — which the TCPA was designed to prevent.” Except for the part about dead air, this sentence is complete bull\*\*\*\*.

If the voicemails are not “calls” under the TCPA, none of the TCPA regulations apply, and therefore there is no limit on when the calls can be placed. The calls can and will be placed at inconvenient times. In truth, the only convenient time to receive an unwanted telemarketing message is never.

Being bombarded by new voicemail notifications will have a scientifically demonstrable detrimental effect on consumers. Sadly, many Americans have become addicted to their cell phones. 60 Minutes recently did a report on how smart phone addiction<sup>2</sup> and its effects on anxiety levels. In a study publicized by The Atlantic, researchers found audible notifications from a cell phone have a significant negative effect on attention test performance.<sup>3</sup> Any type of audible notification was equally destructive.

The researchers found that performance on the assessment suffered if the student received *any* kind of audible notification. That is, every kind of phone distraction was equally destructive to their performance: An irruptive ping distracted people just as much as a shrill, sustained ring tone. It didn't matter, too, if a student ignored the text or didn't answer the phone: As long as they got a notification, and *knew* they got it, their test performance suffered.

Contrary to the claims of the AATM petition, persons on prepaid plans do incur charges as a result of the ringless voice messages. Lucas Declaration (Exhibit B). When the consumer uses his/her cell phone to listen to or erase voice messages, prepaid plans typically charge the consumer. If the consumer decides to ignore the telemarketing voice messages, the voicemail system becomes full and then the consumer can no longer listen to voicemail messages that the consumer wants to receive.

### III. Telemarketing messages using the AATM system violate the 47 C.F.R § 64.1200(b)(3)

47 C.F.R § 64.1200(b)(3) requires telemarketing automated messages to include an interactive method for the consumer to make a do-not-call request. The AATM system delivers

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<sup>2</sup> <http://www.cbsnews.com/news/hooked-on-phones/>

<sup>3</sup> <https://www.theatlantic.com/technology/archive/2015/07/push-notifications-versus-phone-calls/398081/>

the message in a way that does not provide the consumer with a method to make a do-not-call request at the time that the message is delivered.

Because of this, consumers who are on prepaid plans incur additional charges in order to make a do-not-call request (if the caller even provides a means for the consumer to make a do-not-call request. See next section.)

IV. If the AATM system does not make “calls”, none of the TCPA regulations apply. Consumers would be powerless to stop the messages.

If these messages are not “calls”, presumably none of the TCPA regulations would apply. The messages would not be required to state the true identity of the caller or provide a true number at which the caller can be called back in order to make a do-not-call request. Even if the consumer does make a do-not-call request, the caller would be under no legal obligation to comply with it.

V. Telemarketing calls using AATM system are exactly the type of calls that consumers expect the TCPA to protect them from

Some FCC commissioners have questioned whether the TCPA regulations have stepped beyond the original intent of the statute to cover calls that consumers want to receive. However, that is truly not an issue in this case.

Chairman Pai, in DOC-344034A2, commenting on “Advanced Methods to Target and Eliminate Unlawful Robocalls”, mentions complaints from Duncan Weddington, “Please help. I am 80 years old and would like to spend my remaining time on God’s good earth without these consistent unwanted calls” and Florence Friedman about a “maddening” number of robocalls,

which has “gotten worse” and is “really disruptive to one’s life”. Chairman Pai pledged to address these problems. Does anyone really think Mr. Weddington would be happier if he spent his remaining time on earth clearing out his voicemail from telemarketing messages that are constantly being delivered to his telephone number, and being distracted by unwanted incoming voicemail message alerts? Would Ms. Friedman really find these robocalls less maddening if she got an incoming voice message ring instead of an incoming voice call ring?

V. Class actions are appropriate

Like most telemarketing industry petitions, the AATM petition whines about TCPA class actions. The AATM system is exactly the type of thing that deserves class action treatment. Assuming that the AATM system is being used for telemarketing, their system is being used to bombard consumers with robocalls. The number of consumers affected by these nuisance calls are too numerous to effectively handle in individual lawsuits. If I should receive a telemarketing call delivered by AATM, I would volunteer to be the lead class representative in a class action.<sup>4</sup>

## CONCLUSION

The AATM petition should be denied.

Respectfully submitted,

Vincent Lucas, Ph.D.

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<sup>4</sup> I hereby explicitly request that AATM do not deliver, or assist others in delivering, any messages to me, for any purpose. My cell phone number is 513-628-5629. I request that AATM place my telephone number on their do-not-call list and do-not-message list. If I should receive any telemarketing messages using the AATM system, AATM shall discover that Section V is not an idle threat.